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October 15, 2001

Thomas C. Nash
Associate Regional Counsel
U.S. EPA
Region 5
Mail Code C-14J
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: Avery Dennison Corporation's Comments on TechLaw, Inc.'s September 28, 2001 proposed Technical Approach to Waste-In List/Volumetric Ranking for the Chemical Recovery Systems, Inc. Site in Elyria, Ohio

Dear Tom:

Avery Dennison Corporation ("Avery") provides these comments on the "Technical Approach" to preparing a Waste-In List/Volumetric Ranking proposed by U.S. EPA's contractor, TechLaw, Inc. (the "Protocol"). Avery also joins in the comments submitted by the CRS Site Group under separate cover.

First, the Dirty Inventory List ("DIL") should not be used as the basis for TechLaw's Waste-in List/Volumetric Ranking unless it meets the minimum evidentiary prerequisites of authentication and admissibility. If the DIL meets these evidentiary prerequisites, it should not be considered more reliable than other documentary evidence. DIL quantities may be easier to convert to waste-in volumes, but they are not necessarily more reliable. Therefore, DIL transactions should only be included on the waste-in list if they are independently verified by another document or witness statement. TechLaw proposes to use this cross-verification method for quantifying Purchase Payment Journal entries before they are considered for the waste-in list. Avery suggests that cross-verification be used for the DIL transactions as well.

Second, CRS Site records indicate that some PRPs may have purchased reclaimed solvent from the CRS Site operators. PRPs should not be given direct credit for solvent purchased from the CRS Site operators unless they prove that they bought the same specific gallons of solvent that they sent for processing. Avery is not aware of any evidence to suggest that CRS segregated solvent from specific companies for processing. Therefore, the reclaimed solvent purchased represents a mixture of solvents sent by all companies contributing dirty solvent during that time period. Thus, all PRPs sending solvent to the Site during that time period should receive a credit proportionate to the amount of solvent

contributed to the Site during that time period. To simplify, TechLaw should determine solvent in and solvent out each year. The percentage of the solvent that was purchased and shipped offsite should discount the waste-in volumes of all companies contributing solvent during that year. This will provide a more accurate assessment of the waste at the Site that could be contributing to the cleanup costs at the Site. This approach also ensures that companies purchasing more reclaimed solvent than they contributed to the Site would not end up with zero waste in. Certainly, any amount of dirty solvent contributed to the Site could have leaked or otherwise been released at the Site. On the other hand, the amount of reclaimed solvent that was purchased and shipped offsite could not have been spilled or released at the Site, so it should not be reflected in the waste-in database. The proposed discounting method solves this problem. As a simple example, if PRP-A purchased 50,000 gallons of reclaimed solvent from CRS in 1979, and PRPs A, B, C, D & E each sent 50,000 gallons of dirty solvent to CRS for processing in 1979, PRP-A should not have a zero waste-in amount for 1979. Instead, the 50,000 gallons purchased should be divided proportionately among PRPs A, B, C, D, and E so that the waste-in volumes for each PRP contributing dirty solvent to the Site should be 50,000 – (1/5 of 50,000) = 40,000 gallons.

Third, as TechLaw suggests, when evidence indicates that a PRP had a relationship with the CRS Site, but the relationship for that year is not quantified, an extrapolated volume should be included in the waste-in list. The total amount of the extrapolated volume for any given year should be based on the relative amount of business reflected in the business records for that year as compared with the best-documented year. For instance, if CRS processed 100,000 gallons in the best-documented year and generated $50,000 in revenue, then $25,000 generated in 1970 would extrapolate to 50,000 gallons of waste in. Then each company with a demonstrated relationship with CRS during 1970 would be allocated a percentage share of the extrapolated volume based on the relative weight of the evidence demonstrating the 1970 relationship with the Site.

Please contact me if you have any questions or if you require further clarification.

Sincerely,

Bruce Martin
Sr. Project Engineer
Avery Dennison Corporation

cc: Gregory Chemnitz
Douglas McWilliams
Monica Hammer
Geoffrey Barnes

Fax Transmittal Cover Sheet

To: Thomas Nash, - U.S. EPA

From: Bruce Martin, Avery Dennison

Fax Number: 508 634 7022

Date: Mon, Oct 15, 2001 • 8:53 PM

Pages, including cover: 3

If there is difficulty with this transmission, please call: 508 634 7010

Note:
Mr. Nash, here is a hardcopy of Avery Dennison Corporation's comments on TechLaw, Inc.'s proposed technical approach to the Waste In/Volumetric ranking for the Chemical Recovery Systems, Inc. (CRS) site in Elyria, OH.

Bruce Martin

COMMENT #5: Consider evidence that shipments were taken to other Sites

Shipments taken to other Sites should not be considered part of the waste-in volume for the CRS Site. For instance, drums shipped to Michigan CRS during the Site Cleanup should not be considered part of the waste volume at the CRS Site. PRPs should not pay multiple times at different Sites for the same waste shipment.

COMMENT #6: Use only properly authenticated and admissible evidence

The evidence used to assemble the Waste-in List/Volumetric Ranking should be authenticated and admissible pursuant to the Federal Rules of Evidence. For instance, the Dirty Inventory List should not be used unless a witness properly authenticates it or if it meets the criteria for a self-authenticated document under the Federal Rules of Evidence.

COMMENT #7: Provide a mechanism for PRPs to submit evidence

PRPs should have the opportunity to provide additional information for consideration by TechLaw. This may include identifying new PRPs, or additional evidence for PRPs already notified by U.S. EPA. The CRS Site Group's Allocation Subcommittee should work closely with TechLaw to ensure that all available information is considered.

Sincerely,

Douglas A. McWilliams
Counsel to the CRS Site PRP Group

DAM/dcm
cc: CRS Site PRP Group

COMMENT #1: Include owners and operators and transporters in the Waste-In List

In U.S. EPA's *Final Guidance on Preparing Waste-In Lists and Volumetric Ranking Under CERCLA*, (February 20, 1991)("Waste-in Guidance"), the Office of Solid Waste and Emergency Response (OSWER) directs the Regional EPA offices to include owners and operators in Waste-in list under certain circumstances:

> *While owner/operators may be PRPs and consequently may be jointly and severally liable under CERCLA section 107, in most cases they are not included on waste-in lists. **Owner/operators should be included on waste-in lists, however, where there is evidence to suggest they also acted as a transporter or generated waste at the site.***

Waste-in Guidance at IV.B.3 (emphasis added). There is ample evidence that CRS Site owners and operators acted as transporters and/or generators of waste containing hazardous substances. (1) The Dirty Inventory List ("DIL") includes over 100,000 gallons of entries for "Chemical Recovery". (2) CRS transported dirty solvents from generating companies to one or more processing facilities, presumably chosen by CRS as the transporter. (3) By processing dirty solvents that had been purchased, CRS Site operators generated waste sludges at the Site that may have been spilled or otherwise released.

The waste-in volume for an owner or operator and its successors in interest should be based on all available evidence pertaining to the amount of waste brought to the Site during the time that the party owned or operated the CRS Site. Similarly, transporters should be assigned a waste volume based on all available evidence pertaining to the shipments that the party transported to the Site.

There is also significant evidence that adjacent property owners may have contributed hazardous substances to the Site. Groundwater flows from the Harshaw Chemical facility across the CRS Site to the river. Sewer lines carry chemicals from public-access manholes across the CRS Site to the River. All available evidence should be used to quantify the amount of chemicals contributed to the CRS Site by its adjacent property owners and operators and these volumes should be included in the waste-in list.

COMMENT #2: Do not double count any gallon on the waste-in list

We agree that extreme care should be taken to eliminate duplicate transaction records so that a single shipment of chemicals to the Site is not counted more than once in the waste-in list. When a shipment was generated by one party, transported by another, and processed by a third, the volume should be divided equally among all parties potentially liable for that shipment.

COMMENT #3: Make all assumptions transparent

The TechLaw Protocol anticipates some of the assumptions (e.g., conversion factors) that it will make when assembling the Waste-in List. We request that each and every assumption that TechLaw makes be documented and included in its subsequent reports along with the evidence to support each assumption. Also, specify the quality and completeness of the available information relied upon and any expressly identified data gaps. Transparency can also be assured by providing an opportunity for detailed comments by PRPs at each stage of the development of the Waste-in List/Volumetric Ranking.

COMMENT #4: Use scientifically defensible methodologies

The TechLaw Protocol anticipates extrapolating volumes for periods where evidence supports extrapolation. All methodologies utilized for extrapolation should be scientifically and statistically defensible based on available evidence.